

§ 1.661

application for reissue, protest, or litigation shall not be sufficient. The notice contemplated by this section is notice addressed to the administrative patent judge in charge of the interference in which the application or patent is involved.

[49 FR 48455, Dec. 12, 1984, as amended at 60 FR 14530, Mar. 17, 1995]

§ 1.661 Termination of interference after judgment.

After a final decision is entered by the Board, an interference is considered terminated when no appeal (35 U.S.C. 141) or other review (35 U.S.C. 146) has been or can be taken or had.

§ 1.662 Request for entry of adverse judgment; reissue filed by patentee.

(a) A party may, at any time during an interference, request and agree to entry of an adverse judgment. The filing by a party of a written disclaimer of the invention defined by a count, concession of priority or unpatentability of the subject matter of a count, abandonment of the invention defined by a count, or abandonment of the contest as to a count will be treated as a request for entry of an adverse judgment against the applicant or patentee as to all claims which correspond to the count. Abandonment of an application, other than an application for reissue having a claim of the patent sought to be reissued involved in the interference, will be treated as a request for entry of an adverse judgment against the applicant as to all claims corresponding to all counts. Upon the filing by a party of a request for entry of an adverse judgment, the Board may enter judgment against the party.

(b) If a patentee involved in an interference files an application for reissue during the interference and the reissue application does not include a claim that corresponds to a count, judgment may be entered against the patentee. A patentee who files an application for reissue which includes a claim that corresponds to a count shall, in addition to complying with the provisions of § 1.660(b), timely file a preliminary motion under § 1.633(h) or show good cause why the motion could not have

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been timely filed or would not be appropriate.

(c) The filing of a statutory disclaimer under 35 U.S.C. 253 by a patentee will delete any statutorily disclaimed claims from being involved in the interference. A statutory disclaimer will not be treated as a request for entry of an adverse judgment against the patentee unless it results in the deletion of all patent claims corresponding to a count.

[24 FR 10332, Dec. 22, 1959, as amended at 53 FR 23735, June 23, 1988; 60 FR 14530, Mar. 17, 1995]

§ 1.663 Status of claim of defeated applicant after interference.

Whenever an adverse judgment is entered as to a count against an applicant from which no appeal (35 U.S.C. 141) or other review (35 U.S.C. 146) has been or can be taken or had, the claims of the application corresponding to the count stand finally disposed of without further action by the examiner. Such claims are not open to further *ex parte* prosecution.

§ 1.664 Action after interference.

(a) After termination of an interference, the examiner will promptly take such action in any application previously involved in the interference as may be necessary. Unless entered by order of an administrative patent judge, amendments presented during the interference shall not be entered, but may be subsequently presented by the applicant subject to the provisions of this subpart provided prosecution of the application is not otherwise closed.

(b) After judgment, the application of any party may be held subject to further examination, including an interference with another application.

[60 FR 14530, Mar. 17, 1995]

§ 1.665 Second interference.

A second interference between the same parties will not be declared upon an application not involved in an earlier interference for an invention defined by a count of the earlier interference. See § 1.658(c).